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6                   UNITED STATES DISTRICT COURT  
7                   EASTERN DISTRICT OF WASHINGTON

8                   OPAL HARGER, *et al.*  
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10                  Plaintiffs,

11                  v.  
12                  NO. CV-06-5071-RHW  
13                  U.S. DEPARTMENT OF LABOR,  
14                  and THE NATIONAL INSTITUTE  
15                  OF OCCUPATIONAL SAFETY  
16                  AND HEALTH,  
17                  Defendants.

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19                  Before the Court is Plaintiffs' Motion to Dismiss Plaintiffs Hengen/Herman,  
20 Bischoff, Howard, Pritchard/Jones, Caputo/Mundy and Harger with Prejudice (Ct.  
21 Rec. 192). This motion was heard without oral argument.

22                  The above-listed Plaintiffs move the Court to dismiss their cases with  
23 prejudice due to the recent approval of their EEOICPA claims and the full payment  
24 of benefits. Plaintiffs also seek an order from the Court finding as a fact that  
25 Defendant Department of Labor "acknowledged and ratified" the liability alleged  
in this lawsuit by making benefits payments to the instant Plaintiffs (Ct. Rec. 194,  
p. 2). Defendants have no objection to the dismissal of these Plaintiffs, but object  
to the additional language requested by Plaintiffs.

26                  The Court previously addressed and denied a similar argument advanced by  
27 Plaintiffs, noting that the EEOICPA awards were obtained "through an  
28 administrative process separate from this litigation," which did not take place

under the Court’s jurisdiction (Ct. Rec. 122, p. 4). Plaintiffs now ask the Court to judicially sanction a change in the parties’ legal relationship, despite the fact that this change occurred outside of the Court’s jurisdiction, based on facts that have not been conclusively litigated or admitted in this lawsuit. The Court has no authority to do so.

**Accordingly, IT IS HEREBY ORDERED:**

1. Plaintiffs' Motion to Dismiss Plaintiffs Hengen/Herman, Bischoff, Howard, Pritchard/Jones, Caputo/Mundy and Harger with Prejudice (Ct. Rec. 192) is **GRANTED in part.**

2. The claims of Plaintiffs Hengen/Herman, Bischoff, Howard, Pritchard/Jones, Caputo/Mundy and Harger are **DISMISSED with prejudice**. These Plaintiffs are now dismissed from this matter.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and to provide copies to counsel.

**DATED** this 8<sup>th</sup> day of January, 2009.

S/ Robert H. Whaley

**ROBERT H. WHALEY**  
Chief United States District Judge

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